

AL-MAJALLA AL AHKAM AL ADALIYYAH (The Ottoman Courts Manual (Hanafi))

BOOK II. HIRE.

INTRODUCTION

TERMS OF ISLAMIC JURISPRUDENCE RELATING TO HIRE.

- 404. Rent is hire, that is to say, the price paid for use of a thing ; letting is giving on hire, and hiring is taking on hire.
- 405. (has no meaning for the English reader)
- 406. An irrevocable contract of hire is any valid contract of hire which is not burdened by a contractual option, or by an option for defect or by an option for inspection, and which neither of the parties may cancel without some lawful excuse.
- 407. An immediate contract of hire is a contract of hire which comes into force immediately upon the conclusion of the contract.
- 408. A future contract of hire is a contract of hire which comes into force as from some definite future date. Example :- A house is given on hire as from the beginning of some future month for a certain period and for a certain sum of money. A future contract of hire has been concluded.
- 409. The lessor is the person who gives on hire.
- 410. The lessee is the person who takes on hire.
- 411. The thing hired is the thing which is given on hire.
- 412. Property given to work upon is property handed to a person employed by the employer, so that the person employed may do the work which has been entrusted to him, such as stuff given to a tailor to make into clothes, or a load given to a porter to carry.
- 413. The employee is the person giving his services on hire.
- 414. Estimated rent is the rent fixed by disinterested experts.
- 415. Fixed rent is the rent mentioned and fixed at the time of the conclusion of the contract .
- 416. Indemnification consists of giving a similar thing if it is a thing the like of which can be found in the market, or the value thereof, if it is a thing the like of which cannot be found.
- 417. Prepared for hire is said of any thing designed and prepared to be let on hire. It relates to real property such as inns, houses, baths, and shops originally built or bought in order to be let on hire. If a thing is continuously on hire for a period of three years, it is a proof that it is prepared for hire. If a person has a thing made for himself and tells people that it is prepared for hire, such thing is deemed to be prepared for hire.
- 418. A hirer of a wet nurse is a person who hires a nurse to give milk to a baby.
- 419. Partition of usufruct consists of a division of benefit.

Example:- Two persons who are joint owners of a house agree to take the benefit arising therefrom separately in alternate years.

CHAPTER I. GENERAL.

- 420. In a contract of hire, the subject matter of the contract consists of some advantage to be derived from such contract.
- 421. Hire is relation to the subject matter of the contract is of two categories. The first is a contract for hire made with reference to an interest in specific things. The thing which is the subject of hire is called both the object given on hire and the object taken on hire.
The first category is divided into three classes.
 - (1). The first class relates to the lease of real property, such as the hire of houses and lands.
 - (2). The second class relates to the hire of merchandise such as the hire of clothes and utensils.
 - (3). The third class relates to the hire of animals.The second category is a contract of hire with regard to labour. In this category, the person hired is called the employee, as in the case of workmen and servants employed for a wage. Hiring the services of craftsmen and artisans is also included in this category.

Example:- A contract for manufacture and sale is concluded when clothes are ordered to be made by a tailor who supplies the cloth. If the cloth is given to the tailor in order that he should make the clothes, such person's labour has been hired.

- 422. Employees are of two classes.
The first class comprises private employees, that is, persons whose services are retained by one employer only, as in the case of a servant paid a monthly wage.
The second class comprises public employees, that is persons who are not bound by an undertaking not to work for more than one employer. Example:- Porters, brokers, tailors, clock-makers, jewellers, harbour boatmen, cab-drivers, and village shepherds are all public employees; that is, persons who are not employed specially by one particular individual, but work for anyone. But if any one of such persons undertakes to give his services on hire to one employer only for a specific period, he becomes during that period a private employee. Again, a porter, or a cab-driver, or a boatman who gives his services on hire to one employer alone to take such employer to a certain place, and who works for no other person is, until he arrives at his destination, a private employee.
- 423. The person employing a private employee may be one single individual or several persons contemplated as one individual only. Consequently, when the inhabitants of a village hire the services of a shepherd for themselves alone by means of a single contract, such shepherd becomes a private employee. But should those persons permit the shepherd to tend some other person's animals, such shepherd becomes a public employee.
- 424. The wages of a public employee are due when the work is done.
- 425. The wages of a private employee are due if he is ready to work during the period for which he services were hired. It is not essential that he should actually have performed the work. He cannot, however, decline to do the work. If he does so, he is not entitled to his wages.
- 426. A person who is entitled to a definite advantage arising out of a contract of hire may obtain enjoyment of such advantage or the equivalent thereof, or of some lesser advantage. He cannot, however, obtain any greater advantage. Example:-
 - (1). A blacksmith hires a shop in order to carry on his trade there. He can carry on any other trade there which causes no greater injury to the lessor, or a trade causing a lesser degree of injury.
 - (2). If a person does not live a house which he has hired for purposes of habitation, he may store goods therein. But he may not carry on trade as a blacksmith in a shop which he has hired as a grocer's shop.
- 427. Anything which becomes altered by any change in the person using it may validly be made the subject of a restriction. Example:- A person hires a horse to ride himself. No other person may ride it.
- 428. Any restriction imposed in connection with any thing which does not become altered by any change in the person using it is inoperative. Example:- A hires a house to dwell in. B can also dwell in it.
- 429. The owner of a share of undivided jointly owned property may let such share to his co-owner whether such share is capable of division or not. He may not let it to any other person. He may, however, after a partition of the usufruct has been made, let his share to some other person.

- 430. The existence of undivided shares of jointly owned property after the conclusion of a contract of hire does not invalidate such contract.
Example:- A lets his house and after doing so a half share is seized by a person entitled thereto. The lease relating to the other undivided share remains in force.
- 431. Two joint owners may simultaneously let property jointly owned to some other person.
- 432. One particular thing may be let to two particular persons. Each one must pay the amount of the rent which falls to his own share. The share of one may not be obtained from the other unless they are guarantors of one another.

CHAPTER II. QUESTIONS RELATING TO THE CONTRACT OF HIRE.

SECTION I. THE FUNDAMENTAL BASIS OF THE CONTRACT OF HIRE.

- 433. As in the case of sale, the contract of hire is concluded by offer and acceptance.
- 434. In a contact of hire, statements made indicative of offer and acceptance are such expression as " i have given on hire", "I have let", " I have taken on hire" and " I have accepted".
- 435. As in the case of sale, the contract of hire is concluded by the use of the past tense. It cannot be concluded by the use of the future tense. Example :- A says " I will give on hire" and B says " I have taken on hire"; or A says"hire" and B says " I have hired". In both cases no contract of hire has been concluded.
- 436. A contract of hire may be concluded by word of mouth, or by writing, or by the use of generally recognised signs by dumb persons.
- 437. A contract of hire may also be concluded by conduct. Thus, if a traveller boards a steam boat or a harbour rowing boat or rides a hired pony, the rate of hire of which is well known, without concluded any oral contract, the amount of hire involved must be paid. If such rate is not known, an estimated rate must be paid.
- 438. In a contract of hire, silence is considered to indicate assent and acceptance. Examples :-
(1). A leases a shop at a monthly rent of fifty piastres. After staying there for a few months, the lessor informs him that if he agrees to pay sixty piastres on the first of the month he can remain, but if not, he must leave. A refuses to pay sixty piastres and remains in the shop. He is only obliged to pay fifty piastres as hitherto. If, however, he remains silent and continues to reside in the shop without interruption, he must pay a monthly rent of sixty piastres.
(2). An owner of a shop proposes a rent of one hundred piastres and the lessee a rent of eighty piastres. The owner leaves the lessee, who remains in the shop. The rent is eighty piastres. If the two parties persist in their contention, and the lessee remains in possession an estimated rent must be paid.
- 439. If fresh negotiations are commenced after the conclusion of the contract with regard to any change, increase or decrease of the rent, the second contract takes the place of the first.
- 440. A contract of hire may validly be concluded to take effect at some future date. It is irrevocable, although it may not yet have come into force. Consequently, neither of the contracting parties may cancel such contract merely on the ground that it has not yet come into force.
- 441. If after the conclusion of a valid contract of hire, some other person offers a higher rent, the contract of hire may not be cancelled by the lessor by reason of that fact alone. If a guardian or trustee of a pious foundation, however, lets the real property of an orphan or of a pious foundation for a rent which is less than the estimated rent, the contract of hire is voidable and the rent must be increased to the estimated rent.
- 442. If the person taking the property on hire becomes owner of the hired property in any manner, such as by way of inheritance or gift, such property loses its quality of hired property.
- 443. If any event happens whereby the reason for conclusion for the contract disappears, so that the contract cannot be carried out, such contract is cancelled. Examples:-
(1). A cook is hired for a wedding feast. One of the spouses dies. The contract of hire is cancelled.
(2). A person suffering from toothache makes a contract with dentist to extract his tooth for a certain fee. The pain ceases. The contract of hire is cancelled.
(3) A person seeking a wet-nurse dies. The contract of hire is not cancelled. But upon the death of the child or the wet-nurse, such contract is cancelled.

SECTION II. CONDITION RELATING TO THE CONCLUSION AND EXECUTION OF THE CONTRACT OF HIRE.

- 444. To conclude a contract of hire, the two contracting parties must possess the requisite capacity, that is to say, they must be of sound mind and perfect understanding.
- 445. In a contract of hire offer and acceptance must agree and the parties must meet together at the same time and place, as in the case of sale.
- 446. The person letting a thing on hire must be owner of the thing he lets on hire, or the agent of the owner, or his tutor or guardian.
- 447. If any unauthorised person lets anything on hire, such letting is dependent upon the ratification of the owner, and if the owner is minor or is mad, and a contract of letting on hire has been concluded for an estimated rent, such contract is dependent upon the ratification of the tutor or guardian. There are four essentials to the validity of such permission which remain constant: the two contacting parties; the property; the subject matter of the contract; and the rent, should it be payable from merchandise. If one of these essentials is lacking, the permission is valid.

SECTION III. ESSENTIALS TO THE VALIDITY OF A CONTACT OF HIRE.

- 448. The consent of the two contracting parties is essential to the validity of the contract of hire.
- 449. The subject matter of the contract of hire must be specified. Consequently, if one of two shops is let on hire, without the particular shop in question being specified, and the lessee being given an option as to which one he will take, such contract is invalid.
- 450. The rent must be clearly ascertained.
- 451 . In a contract of hire, the advantage to be derived from the subject matter of the contract must be specified in such a manner as to void any possibility of dispute.
- 452. In the case of such things as houses, shops and wet- nurse, the advantage to be derived therefrom is defined by stating the period of hire.
- 453. In the case of hire of a horse, it must be stated whether such horse is to be used as a draught horse, or a riding horse, and if so, who is to ride it: or it may be stated in general terms that whosoever wishes may ride such horse, and the period for which the contract is concluded, or the distance, must also be stated.
- 454. In the case of hire of land, the period of hire must be stated; the purpose for which such land is to be used; and, if it is to be used for cultivation, the nature of the things to be planted; or, if the person taking such land on hire so desires, a statement in general terms must be made to the effect that he may plant whatever he likes.
- 455. In the case of hire of the services of skilled workmen, the advantage to be derived from the services of such workmen may be specified by stating the nature of the work, that is to say, what work is to be done and how it is to be performed. Example:- When clothes are to be dyed, they must be shown to the dyer, the texture thereof must be specified, and the colour stated.
- 456. In the case of transport of goods, the advantage to be derived therefrom is specified by indicating them, and by stating the place to which they are to be transported. Example:- A instructs B to carry a certain load to a certain place. The advantage to be derived therefrom is specified by such load being inspected and the distance being made known.
- 457. The advantage to be derived from the thing hires must be capable of enjoyment. Consequently, a contract of hire in respect to a runaway animal is invalid.

SECTION IV. NULLITY OR VOIDABILITY OF THE CONTRACT OF HIRE.

- 458. If one of the conditions essential to the conclusion of a contract of hire is absent, such contract is void. Example:- A contract of letting or taking on hire entered into by madman or by a minor of imperfect understanding is void. But if the person giving or letting on hire becomes mad after the conclusion of the contract, such contract is not cancelled.
- 459. If a contract of hire which is void is carried out the amount of the hire need not be paid. But if the property is dedicated to pious purposes, or belongs to orphans, an estimated rent must be paid. A madman is treated on the same basis as an orphan.

- 460. If the conditions requisite for the conclusion of a contract of hire are present, but one of the conditions essential to the validity of the contract is absent, the contract of hire is voidable.
- 461. A voidable contract of hire is executory. But in a voidable contract of hire, the person giving on hire is not entitled to the fixed rent, but to the estimated rent only
- 462. The voidability of a contract of hire sometimes arises from the amount of the hire not being known and sometimes owing to the absence of other conditions essential to the validity of the contract. In the first case, the estimated rent must be paid, whatever the amount thereof may be. In the second case, the estimated rent is payable, provided that it does not exceed the fixed rent.

CHAPTER III. QUESTION AFFECTING THE AMOUNT OF THE HIRE.

SECTION I. RENT.

- 463. A thing which is valid as the price in a contract of sale, may be the rent in a contract of hire. On the other hand, a thing which is not valid as the price in a contract of sale may nevertheless be valid as the rent in a contract of hire. Example:- A garden may be taken on hire in exchange for an animal, or in exchange for the right of dwelling in a house.
- 464. If the rent is cash, the amount thereof must be clearly ascertained, as in the case of the price of a thing sold.
- 465. If the rent consists of merchandise, or things estimated by measure of capacity, or by measure of weight, or things estimated by enumeration and which closely resemble each other, such rent must be made known by stating both the amount and description thereof.
In the case of things which require loading and entail expense on account of transport such things must be delivered at the place agreed upon for delivery. If no place has been designated for delivery and the thing hired consists of real property, delivery of such real property must be given at the place where such real property is situated, and if it consists of labour, delivery thereof must be given at the place where the person hired performs his work; if it consists of loading, delivery thereof must be given in the place where the hire becomes payable.
In the case of things which do not require loading and do not entail expense on account of transport, however, delivery thereof must be given at any place that may be required.

SECTION II. NECESSITY FOR RENT: RIGHT OF THE PERSON GIVING ON HIRE TO TAKE RENT.

- 446. Rent does not become payable irrevocably by the conclusion of an unconditional contract: that is to say, there is no necessity to hand over the rent immediately, owing to the mere conclusion of a contract of hire.
 - 467. Rent which is payable immediately is irrevocable: that is to say, if the person taking the thing on hire pays the rent in advance, the person letting the thing on hire becomes the owner thereof, and the person taking the thing on hire cannot demand the return thereof.
 - 468. Rent with a condition for immediate payment is irrevocable; that is to say, if it is stipulated that rent must be paid in advance, the person taking the thing on hire is bound in any case and first of all to hand over the rent, whether the contract of hire is for the use of some specific thing, or for the performance of any piece of work.
In the first case, the person letting the thing on hire may refuse to hand over the thing hired until the rent has been paid. In the second case, the person giving his services on hire may refuse to perform the work until his wages have been paid.
In both cases, if the person letting the thing on hire demands payment of the rent in advance and the person taking the thing on hire refuses, the contract of hire may be cancelled.
 - 469. Rent becomes payable when the thing is put to the use for which it is hired.
- Example:- A the owner of a horse, lets such horse on hire to B in order that he may ride it to a certain place. Upon arrival at that place, A is entitled to the amount of the hire.
- 470. In a valid contract of hire, the rent is also payable when there is ability to put the thing to the use for which it was hired. Example:- A takes possession of a house which he has taken on hire by means of a valid contract of hire. A is obliged to pay the rent, even though he does not inhabit such house.
 - 471. In a voidable contract of hire, mere ability to put the thing to the use for which it was hired is not enough. The rent is not payable unless the thing is actually put to the use for which it was hired.
 - 472. If a person uses the property of another person without the conclusion of a contract and without such person's permission, and if it is property prepared for hire, an estimated rent must be paid, but not otherwise. But if the owner of the property has previously demanded payment of rent, and such person uses such property, rent is payable, even though no benefit can be derived from such property. The reason for this is that by using the property, such person is deemed to have agreed to pay the rent.
 - 473. Effect is given to any condition agreed upon by the two contracting parties regarding immediate or deferred payment of the rent.
 - 474. If a stipulation is made for a deferred payment of the price of the hire, the person giving the thing on hire must first of all deliver such thing; and a person giving his services on hire, must perform his work. The price of the contract of hire is not payable until after the expiration of the period agreed upon.

- 475. If an unconditional contract of hire is concluded for the use of some specific object, or for the performance of any piece of work, and no stipulation is made as to immediate or deferred payment, the person giving the thing on hire must in any case first of all give delivery of the thing hired, and the person giving his services on hire must perform the work.
- 476. If the rent is payable by some specified period, such as monthly or yearly, such rent must be paid at expiration of that period.

Example:- Rent payable monthly must be paid at the end of the month. Rent payable yearly must be paid at the end of the year.

- 477. When the rent falls due, delivery must be given of the thing hired; that is to say, rent falls due as from the time of delivery. Thus, the person giving the thing on hire is not entitled to rent in respect to the period expiring prior to delivery. If the period of hire terminates prior to delivery, no part of the rent is payable.
- 478. If the benefit to be obtained from the thing hired is entirely lost, no rent is payable. Example:-
(1). A bath is in need of repairs. If it cannot be used during that period, the portion of the rent corresponding to such period is deducted.
(2). The water of a mill is cut off and the mill remains idle. No rent is payable from the time at which the water was cut off. But if the person hiring the mill uses it for any purpose other than that of grinding corn, such person is bound to pay a portion of the rent corresponding thereto.
- 479. If a person takes a shop on hire and is given delivery thereof and alleges that on account of slackness of business his trade has stopped and his shop has been shut, such person cannot refuse to pay rent for that period.
- 480. If a boat is taken on hire for a certain period, and the period expires while on the journey, the period of hire is extended until the shore is reached. The person taking the boat on hire must pay as estimated rent in respect to such excess period.
- 481. If one person gives his house to another person in order that the latter may repair it and live in it rent free, and such person does in fact effect such repairs himself and dwells in such house for a certain period, the expenses occasioned by such repairs fall upon such person, since the giving of the house is in the nature of a loan for use. The owner of the house cannot claim anything from him by way of rent in respect to such period.

SECTION III. RIGHT OF LIEN OF A PERSON TO WHOM A THING HAS BEEN ENTRUSTED TO WORK UPON.

- 482. A person hired to do work, and whose work causes a change in the thing given to him to work upon, such as a tailor, a dyer, or a cleaner, and who has made no contract whereby his work is to be done on a credit basis, has a right of retention over the thing entrusted to him to work upon, for payment of his wage. If he exercises such right of retention and the property is destroyed while in his possession, he cannot be called upon to make good the loss. He cannot, however, claim his wages in addition.
- 483. A person hired to do work, and whose work causes no change in the thing upon which he works, such as a porter or a sailor, has no right of retention over the thing upon which he works, for payment of his wage. Thus if exercises a right of retention and the property is destroyed while in his possession, he is liable to make good the value thereof.
The owner of the property has an option either of claiming compensation on the basis of the value of the thing destroyed, plus cost of transport and of paying the wages, or of merely claiming the value of the thing destroyed, without paying the wages.

CHAPTER IV. THE PERIOD OF HIRE.

- 484. A person may give his property on hire, whatever the form of ownership, for a fixed period, whether of short duration, such as a day, or whether of long duration, such as a period of years.
- 485. The commencement of the period of hire is deemed to be the time named when the contract was concluded.
- 486. If no time is mentioned as the commencement of the period of hire when the contract is concluded, such time is deemed to be the time when the contract was concluded.
- 487. Real property may validly be let on hire for a period of a year, either at a rent of so much per month, or of so much of the year, without stating the rent per month.
- 488. If a contract of hire is made at the beginning of the month for a period of one month, or for any period in excess thereof, such contract is a monthly contract. In such a case, if the month is less than thirty days, a full month's rent must be paid.
- 489. If a contract is made, for a period of one month and a portion thereof has expired, the period of one month is considered to consist of thirty days.
- 490. If a portion of the month has expired and a contract has been concluded for a period of months, and the first month is not complete, such month is completed by the payment of rent at so much per day, from days taken from the last month, so as to make thirty days. The intervening months are calculated as from the first day of each lunar month.
- 491. If a portion of the month has expired and the number of months is not expressed, and a certain sum is agreed upon as being payable as rent for each month, the first incomplete month is considered to consist of thirty days in the same manner as the other months.
- 492. If a contract of hire is concluded for a period of one year at the beginning of the month, the year is considered to consist of twelve months.
- 493. If a portion of the month has expired and a contract of hire has been concluded for a period of one year, the first month is calculated according to days, and the other eleven months as from the first of the lunar month.
- 494. If real property is hired at a rent of so much per month and the number of months is not mentioned, a valid contract has been concluded. Upon the completion of the first month, however, both the person giving and the person taking such real property on hire may cancel the contract of hire on the first night and day, however, have expired, such contract cannot be cancelled. If one of the two contracting parties alleges that he has cancelled the contract during the course of the month, such contract is cancelled as from the end of the month. If during the course of the month one of the parties states that he has cancelled the contract as from the beginning of following month, such contract cancelled as from the beginning of the following month. If payment is made in advance for two or more months, neither party may cancel the contract of hire in respect to those months.
- 495. If a person hires another to work for a day from sunrise to the time of evening prayer or till sunset, the conditions prescribed by local custom must be observed as regards the performance of the work.
- 496. If a person is hired to work for a period of days, as for example, a carpenter for a period of ten days, the contract is presumed to be concluded with reference to the days following. If he is hired to do ten days work during the summer, the contract of employment is invalid unless the month is stated and the day from which the work is to commence.

CHAPTER V. OPTIONS.

SECTION I. CONTRACTUAL OPTIONS.

- 497. A contractual option exists in the case of hire, as in the case of sale. Either or both of the parties may give or take on hire, subject to an option of a certain number of days.
- 498. The person having the option may cancel the contract of hire during the period of the option or may ratify such contract.
- 499. Both cancellation and ratification may be by word of mouth, or in writing, or by conduct, as is set forth in Article 302,303 and 304. Consequently, if person giving on hire possesses an option and performs any act with regard to the thing hired indicative of the exercise of a right of ownership, the contact of hire is cancelled by conduct. If the person taking on hire possesses an option and performs any act with regard to the thing hired indicative of the exercise of a right of ownership, the contract of hire is cancelled by conduct. If the person taking on hire possesses an option and performs any act with regard to the thing hired indicative of the exercise of the right of a lessee, the contract of hire is ratified by conduct.
- 500. If the person possessing an option allows the period of the option to expire without cancelling or carrying out the contract, the option is lost and the contract of hire becomes irrevocable.
- 501. The period of option is presumed to run from the time of the conclusion of the contract.
- 502. The commencement of the contract of hire is presumed to run from the time when the option was lost.
- 503. If a piece of land taken on hire and said to consist of so many yards or donums proves to be of greater or smaller extent, the contract of hire is valid and the fixed rent becomes payable. Should it prove to be smaller, however, the person taking the land on hire has the option of cancelling the contract of hire.
- 504. If a piece of land is taken on hire at so much per donum the rent is payable at so much per donum.
- 505. If a wage is fixed as payment for work to be performed by a given period, the contract of hire is valid and the condition effective.
Examples:-
(1). A gives cloth to a tailor to be cut up and made into a shirt to be ready on the same day.
(2). A hires a camel from B to carry him to Mecca in so many days.
In both cases the contract of hire is executory, and if the person giving the thing on hire fulfils the condition, he can claim the fixed wage. If he fails to do so, however, he is entitled to an estimated wage, provided such wage does not exceed the wage.

- 506. The wages my validly be fixed alternatively in two or three ways as regards the work, the workman, the load, the distance, the place and the time, and the wages must be paid according to whichever way the work is carried out. Examples:-
(1). A contract is made for back-stitching a thing for so much, and for over- stitching it for so much. The wages must be paid according to the way in which it is sewn.
(2). A contract is concluded for so much in respect to a shop to be used as a perfumery and for so much as a forge. The person taking the thing on hire must pay the fixed rent according to the way in which he uses the shop.
(3). A contract is concluded to load corn on a draught animal for so much and iron for so much. The hire agreed upon must be paid according to the load used.
(4). A muleteer states that he has let a particular animal on hire to go to CHORLU for one hundred piastres and to ADRIANOPLIS for two hundred piastres and to PHILIPOLIS for three hundred piastres. The person taking the animal on hire must pay a sum corresponding to the place to which he goes.
(5). A states that he has let one particular house on hire for one hundred piastres and another house for two hundred piastres. The person taking the house on hire agrees. Such person must then pay the fixed rent according to whichever house he lives in.
(6). A hands a cloak to a tailor stating that he will pay fifty piastres if it stitched on the same day, and thirty piastres if it is stitched on the following day. The contract is executory and the condition is valid.

SECTION II. OPTION OF INSPECTION.

- 507. The person taking the thing on hire has an option of inspection.
- 508. An inspection of the thing hired is equivalent to an inspection of the advantage to be derived therefrom.
- 509. If a person takes a piece of real property on hire without seeing it, he may exercise an option as soon as he sees it.
- 510. If a person takes on hire a house which he has seen previously, he has no option of inspection in respect to such house. However, if the place is dilapidated and unfit for habitation to such an extent that its original form is changed, such person may exercise an option.

- 511. A person hired to do a piece of work which changes in accordance with any change in the subject-matter of such work, has an option of inspection. Example:- An agreement is concluded with a tailor to stitch a cloak. Upon seeing the cloth or the cloak, the tailor may exercise an option.
- 512. There is no option of inspection attaching to a thing which is not changed in accordance with any change in the subject-matter of such work. Example:- A contract is made to clean a certain amount of cotton seed for a certain sum of money . Although the person so employed has not seen the cotton seed, he has no option of inspection.

SECTION III. OPTION FOR DEFECT.

- 513. There is an option for defect in the case of a contract of hire, as in a contract of sale.
- 514. In a contract of hire, the circumstance which creates an option on account of defect is something which causes the complete loss of or interference with the benefits sought to be obtained. Example:- A house is entirely destroyed ; the utility of a mill is negated by the water being cut off; the frame of the roof of a house sinks; a place is knocked down so as to be unsuitable for habitation; the back of a horse which is hired is injured by galling. In all these cases there is an option for defect if they are taken on hire, on account of the benefits sought to be obtained being destroyed. But defects which do not interfere with the benefits sought to be obtained give no right to an option for defect in the case of a contract of hire, as where the plaster of a house falls off, but not to such an extent that rain and cold can enter; or where the mane or tail of a horse is cut.
- 515. If a defect occurs in the thing hired before such thing has been put to the use for which it was hired, such defect is considered to have existed at the time the contract was concluded.
- 516. If a defect occurs in the thing hired, the person taking on hire may exercise an option. He may either put the thing hired to the use for which it was hired in spite of the defect, in which case he must pay the whole of the rent, or he may cancel the contract of hire.
- 517. If the person giving a thing on hire removes a defect of recent origin before the cancellation of the contract of hire by the person taking such thing on hire, the latter has no right of cancellation. And if the person taking the thing on hire wishes to take possession thereof for the remainder of the period, the person giving such thing on hire cannot prevent him from doing so.
- 518. If the person taking a thing on hire wishes to cancel the contract of hire prior to the removal of a defect of recent origin which prevents the thing hired being put to the use for which it was hired, such person may cancel the contract in the presence of the person giving the thing on hire. He may not do so in his absence. If he cancels the contract in the presence of the person giving the thing on hire, that is to say, without giving him notice thereof, such cancellation is of no effect, and the rent continues to be payable as heretofore.

If the benefits sought to be obtained are entirely lost, however, the contract may be cancelled in the absence of the person giving the thing on hire.
whether the contract is cancelled or not the rent is not due, as is set forth in [Article 478](#). Example:- A place collapses and destroys the use to which a house taken on hire can be put. The person taking the house on hire may cancel the contract of hire .The cancellation, however, must take place in the presence of the person letting the house on hire. If he fails to give notice and leaves the house, he is bound to pay rent as though he had not left the house. If the house is entirely destroyed, however, the person taking the house on hire may cancel the contract without the necessity of doing so in the presence of the person giving the house on hire. In any case the rent is not due.

- 519. If a room or a wall of a house collapses and the person taking the house on hire does not cancel the contract of hire, but dwells in the rest of the house, no portion of the rent is remitted.
- 520. If a person takes two houses on hire together for a certain sum of money and one of them collapses, he may leave both of them together.
- 521. If a house taken on hire as containing so many rooms proves to contain fewer rooms than the stipulated number, the person taking the house on hire has the option of cancelling the contract of hire or of agreeing to the contract of hire and of paying the fixed rent. If he carries out the terms of the contract of hire, however, he is not entitled to any reduction in the rent.

CHAPTER VI. TYPE OF THING HIRED AND MATTERS RELATING THERETO.

SECTION I. MATTERS RELATING TO THE HIRE OF REAL PROPERTY.

- 522. A person may validly take a house or shop on hire without stating who is to live therein.
- 523. If a person lets his house or shop on hire containing his goods or effects, the contract of hire is valid, but the person letting such house or shop on hire is bound to deliver the house or shop after taking out the goods or effects.
- 524. If a person takes a piece of land on hire without stating what he will sow therein or without making a stipulation of a general nature to the effect that he may sow whatever he likes, the contract of hire is voidable. But if such matter is defined before cancellation, and the person giving the land on hire agrees thereto, such contract becomes a valid contract of hire.
- 525. If a person takes a piece of land of hire with a right of sowing what he likes, he may cultivate such land more than once in a year with a view to winter and summer crops.
- 526. If the period of the contract of hire expires before the crops are ripe, such crops may remain on the land until they are ripe, the person taking such land on hire paying an estimated rent.
- 527. A person may validly conclude a contract of hire for a shop or house without stating the use to which it is to be put, which matter is settled according to custom.
- 528. Person who takes a house on hire without stating the use to which it is to be put, may dwell in it himself or let some other person dwell therein, and may place his effects therein.
He may perform any kind of work therein, provided it is not of such a nature as to weaken or damage the building. He may not perform any work of such a nature as to damage the building unless he receives the permission of the owner. Local custom is followed as regards the tethering of animals. The same stipulations are in force as regards shops.
- 529. The person giving the thing on hire must put right anything likely to interfere with the benefits sought to be obtained from the thing hired. Examples:-
(1). The owner must clean the water channel of a mill.
(2). Repairs and improvements to the house and water courses and pipes, the repair of things detrimental to habitation and other; matters relating to the building must all be performed by the owner. If the owner refuses to do these, The person taking the house on hire may leave the same. If, however, such person was aware that the house was in that state when he took it on hire, he is considered to have agreed to the defect. He cannot later make this a pretext for leaving the house. If the person taking the house on hire does these things himself, such act is in the nature of a gift and he cannot claim the expenses incurred thereby from the person giving the house on hire.
- 530. If the person taking property on hire does repairs with the consent of the person giving such property on hire, and such repairs are for the improvement of the property, such as changing the tiles of the roof, or preventing any harm being done thereto, the person taking the property on hire may call upon the person giving the property on hire to make good the expenses incurred by such repairs, even though no stipulation has been made to that effect. However, if such repairs are purely in the interest of the person taking the property on hire, such as repairing the oven of the house, the person taking the house on hire cannot claim the expenses from the person giving the house on hire, unless a stipulation has been made to that effect.
- 531. If the person taking real property on hire erects buildings or plants trees thereon, the person giving such real property on hire has the option, on the expiration of the period of hire, either of having such building pulled down, or of having such trees uprooted, or of keeping them upon payment of value thereof, whatever that may be.
- 532. Dust, earth and sweepings which have accumulated during the period of the contract of hire must be cleaned and removed by the person taking the thing on hire.
- 533. In the event of the person taking the thing on hire damaging such thing, the person giving such thing on hire, may, if he is unable to prevent such damage, apply to the Court for an order cancelling the contract of hire.

SECTION II. HIRE OF MERCHANDISE.

- 534. A valid contract of hire may be concluded for a definite period and for a definite rent with regard to movable property such as clothing, weapons and tents.
- 535. If a person takes clothing on hire to go to any particular place, and fails to go to such place and wears them in his house, or does not wear them at all, he must nevertheless pay the hire thereof.
- 536. A person who takes clothes on hire to wear himself may not give such clothing to another person to wear.

- 537. Jewellery is treated on the same basis as clothing.

SECTION III. HIRE OF ANIMALS.

- 538. A contract may validly be made to take a specific animal on hire and a valid contract may also be made with an owner of animals to be carried to a specific.
- 539. If a specific animal is taken on hire to proceed to a certain place, and such animal becomes fatigued and stops on the way, the person taking such animal on hire has the option either of waiting till the animal gets better or of avoiding the contract of hire, in which case he is obliged to pay a portion of the fixed hire proportionate to the distance he has been carried.
- 540. If a bargain has been struck to carry a certain place and the animal becomes fatigued and stops on the way, the owner of the animal is bound to charge such load on to another animal and carry it to the place in question.
- 541. A contract to take an unspecified animal on hire is of no effect. if such animal is specified after the conclusion of the contract, however, and the person taking such animal on hire agrees thereto, such contract is valid. But it is customary to take an animal of no particular type on hire, such hire is valid, and is governed by such custom. Example:- A horse is hired from a horse-owner to take a person as far as a particular place in accordance with custom. The owner is obliged to transport that person to such place by horse in accordance with the particular custom.
- 542. In a contract of hire it is not enough to designate the end of a journey by mentioning the name of a particular territory, such as a SANJAK or vilayet. On the other hand, this may validly be done if by custom the name of such territory is applied to a town. Example:- A valid contract of hire cannot be concluded to take an animal on hire to go to Bosnia or Arabia. The name of the town, township or village to which such person is going must be mentioned. The word Sham, however, the name of a certain territory, is by custom applied to the town of Damascus, and therefore a valid contract may be concluded to hire an animal to go as far as Sham.
- 543. If an animal is taken on hire to proceed to a certain place, and it so happens that there are two places of that name, an estimated sum by way of hire must be paid in respect to whichever place the person taking the animal on hire goes.
Example:- An animal is taken on hire to proceed from Constantinople to Chekmeje, and it is not specified as to whether the animal is to go to Greater or Lesser Chekmeje. An estimated sum by way of hire must be paid according to the distance to the place in question.
- 544. If an animal is taken on hire to proceed to a certain town, the person taking such animal on hire must be taken to his house in such town.
- 545. A person who takes an animal on hire to proceed to a specified place may not go beyond that place without the permission of the owner. If he does in fact go beyond such place, the person taking such animal on hire is responsible for handling over the animal safe and sound, and if such animal is destroyed either on the outward or return journey, he must make good the loss.
- 546. If an animal is taken on hire to go to a specified place, the person taking such animal on hire cannot go with him to another place. If he does so and the animal is destroyed, he must make good the loss. Example:- If an animal is taken on hire to go to Tekfur Dagh. But instead goes to Islamiyah and the animal is destroyed, the loss must be made good.
- 547. If an animal is taken on hire to go to a specified place, and there are several roads leading thereto, the person taking such animal on hire may proceed by whichever road he prefers which is commonly used by the public. If the owner of the animal prescribes the road which is to be taken, and the person taking such animal on hire proceeds by another road and the animal is destroyed, the loss must be made good if the road taken is more winding or difficult than that prescribed by the owner of the animal. But if it is of equal length or easier, the loss need not be made good.
- 548. The person taking the animal on hire for a specified period may not use it for longer than that period. If he does so, and the animal is destroyed while in his possession, he must make good the loss.
- 549. A valid contract may be made to take an animal on hire to be ridden by a specified person. A valid contract may also be made in general terms to take an animal on hire to be ridden by anyone.
- 550. An animal which is taken on hire for riding may not be used as a draught animal. If it is so used and the animal is destroyed, the loss must be made good. In this case, however, no hire need be paid. (See Article 86.)
- 551. If an animal is hired to be by a certain person, no other person may ride such animal. If he does so, and the animal is destroyed, the loss must be made good.
- 552. A person who has taken an animal on hire in order that it may be ridden by any person he likes, may either ride such animal himself, or allow some other person to do so. But whether he rides it himself or allows some other person to ride it, once the particular person to ride such animal is known, no other person may ride it.
- 553. If an animal is taken on hire for riding and it is not stated who is to ride it, nor laid down in general terms that any particular person who wishes may ride it, the contract of hire is voidable.

But if this is made clear before the contract is cancelled, such contract becomes valid. In this case also, one a particular person has been named no other person may be allowed to ride the animal.

- 554. If an animal is taken on hire as a draught animal, local custom is binding as regards the saddle, rope and sack.
- 555. If the amount of the load is not stated or made clear by signs, the amount of such load is determined by custom when an animal is taken on hire.
- 556. The person taking an animal on hire may not beat such animal without the owner's permission. If he does so, and the animal is destroyed as a result thereof, he must make good the loss.
- 557. If the owner gives his permission for an animal taken on hire to be beaten, the person taking the animal on hire may only beat such animal on a place where it is usual to do so. If he beats him on any other place, as for example, on the head, instead of the quarter, and the animal is destroyed as a result thereof, such loss must be made good.
- 558. An animal hired to carry loads may also be used for riding purposes.
- 559. When an animal is taken on hire and the nature and quantity of the load is stated, a load of another; nature equal to or lesser than such load may also be placed upon such animal. But no greater load may be placed thereon. Examples:-

(1). A takes a horse on hire to carry five kiles of wheat. A may load five kiles of his own wheat, or of anybody else's wheat of whatsoever sort upon such horse. He may also load five kiles of barley. But he may not load five kiles of wheat on an animal hired to carry five kiles of barley.

(2). A hundred okes of iron may not be loaded upon an animal hired to carry a hundred okes of cotton.

- 560. The owner of the animal taken on hire must unload such animal.
- 561. The person giving the animal on hire is responsible for feeding such animal. Example:- The feeding and watering of an animal taken on hire fall upon the owner. If the person taking the animal on hire, however, feeds it without the permission of the owner, such feeding, is an involuntary gift and the value thereof cannot later be claimed from the owner.

SECTION IV. HIRE OF PERSONAL SERVICES.

- 562. A contract may validly be made for the hire of personal services or the performance of skilled labour for a specified period or in some other way, as by specifying the nature of the work, as is set forth in Section III of Chapter II.
- 563. If a person works for some other person at the latter's request without entering into any contract in regard to the wage to be paid, he is entitled to receive an estimated wage if he is of the class of persons who work for a wage. If he is not of such class, however, he is not entitled to receive anything.
- 564. If a person requests some other person to do a certain piece of work for him and promises him something in return without mentioning the amount thereof, and such person does that work, he is entitled to an estimated wage.
- 565. If a person employs workmen without fixing the amount of the wage to be paid, and if the daily wage of such workmen is known, they are entitled to receive the daily wage. If it is not known, they are entitled to an estimated wage. The work performed by skilled workmen is also of this type.

- 556. If a contract of hire is entered into with an employee whereby payment is to be made by giving a thing the like of which cannot be found in the market, and the nature of which has not been defined, an estimated wage must be paid.

Example:- A calls B and asks B to work for him for a certain number of days in return for which A promises to give B a pair of oxen. There is no need to give the pair of oxen, but an estimated wage must be paid. It is customary, however, when a wet nurse is taken on hire for clothes to be made for her. If the nature of the clothes has not been defined beforehand, they are to be of medium quality.

- 567. Tips given to servants from outside cannot be included in wages.
- 568. If a teacher is employed to teach any science or art and the period is defined, the contract of employment is concluded in respect to that particular period. Such person is entitled to his fee if he is ready and willing to teach, whether the pupil studies or not. If the period is not defined, the contract of hire voidable. If the pupil studies under these circumstances, the teacher is entitled to his fee. If not, he is not entitled to his fee.
- 569. If a person sends his son to a master to learn a trade and no agreement is made between the two as to the fee to be paid, and they both claim a fee after the boy has learnt the trade, the question is decided in accordance with local custom.
- 570. If the inhabitants of a village hire the services of a khoja or an imam or a muezzin, and such persons perform their duties, they are entitled to receive their wages from the inhabitants of that village.
- 571. When a person has been employed to do work personally, he may not employ anyone to do the work in his place.

Example:- A contracts with B for B to sew a cloak with his own hand for so many piastres. The tailor may not have it sewn by any other person. It must be sewn by B himself. If B has it sewn by any other person and it is destroyed, he must make good the loss.

- 572. If an unconditional contract has been made, the employee may employ another person in his place.
- 573. If the employer gives a definite order to the employee to do a certain piece of work, such order is unconditional.

Example:- A instructs a tailor to sew a cloak for so much money without binding him to do the work personally. After the conclusion of the contract, the tailor has the cloak sewn by his assistant or by another tailor. The tailor is entitled to the fixed price. If the cloak is destroyed without his fault, he may not be called upon to make good the loss.

- 574. Matters connected with the work done are settled in accordance with local custom when there is no specific condition binding the person employed. Thus, custom has it that the thread shall be the tailor's thread.

- 575. A porter must carry the load inside the house, but he is not bound to put it in position.

Example:- It is not the duty of the porter to take the load up to the top floor; nor to put grain into a barn.

- 576. The employer is not bound to feed the employee unless local custom is to that effect.
- 577. If a broker hawks property round but cannot sell it, and the owner sells it at some later date, the broker is not entitled to a fee. If another broker sells such property, such second broker takes the whole of the fee, and the first broker is not entitled to anything.
- 578. If a person gives his property to a broker, instructing him to sell it for so many piastres, and such broker sells it for more than the stipulated sum, the owner of the property is entitled to the whole of such sum in excess, and the broker is not entitled to anything more than the brokerage fee.
- 579. In the case of a sale, where the broker has received his fee, and some person appears who is entitled to the thing sold and takes possession of the same, or if the thing sold is returned on account of some defect, the return of the brokerage fee cannot be claimed.
- 580. If a person employs reapers to reap crops in his field for a certain sum of money, and after such reapers have reaped a portion thereof, the rest is destroyed by a fall of hail or by some other accident, the reapers are entitled to a share of the fixed wage proportionate to the quantity reaped, but not to the balance.
- 581. If a wet nurse falls sick she is entitled to cancel the contract of employment. The employer may cancel the contract of employment if she becomes sick or pregnant, or if the child refuses to take her breasts, or if it brings up the milk.

CHAPTER VII. RIGHTS AND OBLIGATIONS OF THE PERSON GIVING AND THE PERSON TAKING ON HIRE AFTER THE CONCLUSION OF THE CONTRACT.

SECTION I. DELIVERY OF THE THING HIRED.

- 582. Delivery of the thing hired consists of permission being given by the person giving the thing on hire to the person taking the thing on hire to enjoy such thing without let or hindrance. <1815>
- 583. Upon the conclusion of a valid contract of hire for a particular time or for a particular journey, the thing hire must be delivered to the person taking the thing on hire to be continuously in his possession until the expiration of such period, or the end of such journey.

Example:- A takes a cart on hire for a certain period, or in order to go to a certain place. A can use the cart during such period or until he has arrived at his destination. The owner may not use it for his own purposes during that period.

- 584. If a person who owns real property in absolute ownership containing other property of his own, gives such real property on hire, no rent is payable until it is delivered free from all such encumbrances, unless they have been sold to the person taking the property on hire.
- 585. When the lessor of the house hands the house over minus a room in which he has stored his goods, the proportion of the rent represented by such room must be deducted. As regards the rest of the house the lessee may exercise an option. If the lessor evacuates the house entirely and hands it over before cancellation of the contract, such contract is irrevocable; that is to say, the right of the lessee to cancel the contract is lost.

SECTION II. RIGHT OF THE CONTRACTING PARTIES TO DEAL WITH THE THING HIRED AFTER THE CONCLUSION OF THE CONTRACT.

- 586. If the thing hired consists of real property, the person taking such real property on hire may give it on hire to some third person before taking delivery thereof. He may not do so, however, if it is movable property.
- 587. The person taking the thing on hire may let such thing on hire to some third person if it is not changed by use or enjoyment.
- 588. In the case of a voidable contract of hire the person taking the thing on hire may validly give it on hire to some third person after taking delivery thereof.
- 589. If a person who has given his property on hire to some other person for a definite period in accordance with the terms of an irrevocable contract of hire, again gives such property on hire to some third person, the second contract of hire ineffective.
- 590. If the person giving the thing on hire sells the thing hired without the permission of the person taking the thing on hire, the sale is not executory as regards the latter, but is executory as regards the vendor and the purchaser, and on the expiration of the period of hire, the sale is irrevocable as regards the purchaser and he may not refuse to take delivery thereof. However, if before the expiration of the period of hire the purchaser asks the vendor to hand over the thing sold, and it is impossible to do so, the Court shall cancel the contract of sale. If the person taking the property on hire ratifies the sale, the sale becomes executory in respect to each party. If the person taking the thing on hire, however, has made payment in advance, the thing hired cannot be taken from him until he has received payment of the amount of the rent paid by him in respect to the unexpired portion of the lease. If the person taking the thing on hire hands it over without receiving payment, he loses his right of retention.

SECTION III. RETURN OF THE THING HIRED.

- 591. On the termination of the contract of hire, the person taking the thing on hire must give up the thing hired.
- 592. The person taking the thing on hire may not use the thing hired after the termination of the contract of hire.

- 593. If the person giving the thing on hire asks for the return of his property upon the termination of the contract of hire, the person taking the thing on hire is bound to return it to him.
- 594. The person taking the thing on hire is not bound to return the thing hired, but the person giving the thing on hire is bound to take over the thing hired on the expiration of the contract of hire.

Examples:- (1). Upon the termination of the lease of a house the owner must come and take delivery thereof. (2). An animal is taken on hire is in that place, he must take over his animal. If he arrives and does not take it over, and it is destroyed while in the possession of the person hiring the animal without such person's fault, or neglect, such person may not be called upon to make good the loss. If, however, the animal is hired to leave and return to a definite place, it must be brought to that place. If it is not brought to such place, but is brought to the house of the person taking the animal on hire and is destroyed while there, the loss must be made good by such person.

- 595. If the return of the thing hired involves expenditure for transport, such expenses fall upon the person giving the thing on hire.

CHAPTER VIII. COMPENSATION

SECTION I. COMPENSATION IS RESPECT TO USE.

- 596. If a person uses any property without the permission of the owner thereof, this amounts to wrongful appropriation, and he is not obliged to pay for the use thereof. If, however, the property has been dedicated to pious purposes, or is the property of a minor, an estimated rent must be paid in any case. If it is property owned in absolute ownership, nor as a result of contract, payment for use must be made; that is, an estimated rent must be paid.

Example:-

(1). A lives in B's house for a certain period without concluding a contract of hire. He is not obliged to pay rent. But if the house has been dedicated to pious purposes or is the property of the minor, an estimated rent must be paid in respect to the period during which it has been inhabited, whether it is claimed to be property held in absolute ownership, or as a result of contract.

(2). In the case of a house for hire, an estimated rent must be paid if it is claimed to be property held in absolute ownership nor as a result of contract.

(3). A takes B's horse, which B lets out on hire, and uses it for a certain period without the permission of B. An estimated sum by way of hire must be paid.

- 597. If property is used which is claimed to be property owned in absolute ownership, even though it is prepared for hire, nothing need be paid in respect to such use.

Example:- One of the joint owners of a piece of jointly owned property uses such property for a certain period independently and without the consent of the other joint owner, asserting that it is his own property owned in absolute ownership. The other joint owner cannot claim rent in respect to his share, even though it is property prepared for hire.

- 598. If use is made of property which is claimed to be owned as a result of contract, even though it is prepared for hire, nothing need be paid in respect to such use.

Example:-

(1). A is joint owner of a shop and sells such shop to B without the permission of the other joint-owner. B holds such shop for a certain period. The other joint-owner does not give his assent to the sale and seizes his share. He cannot claim rent in respect to his share, however, much the shop may have been prepared for giving on hire, because the purchaser, having asserted that he has used it as an owner, his ownership being claimed to be used upon a contract, that is to say, upon a contract of sale, is not obliged to pay for the benefit received.

(2). A sells and delivers his mill to B which he asserts is his own property held in absolute ownership. After having held it for a certain period, another person appears claiming the mill and after proving his case and obtaining judgement, takes it from the purchaser. Such person cannot claim anything from B in the way of rent in respect to that period, since this is claimed to be based on a contract.

- 599. If any person employs a minor without the consent of his tutor, such minor is entitled to receive an estimated wage for his services upon his reaching the age of puberty. If the minor dies, his heirs may claim an estimated wage from the employer in respect to the period of the employment.

SECTION II. COMPENSATION BY PERSON TAKING THE THING ON HIRE.

- 600. Whether the contract of hire is valid or not, the thing taken on hire is on trust while in the possession of the person taking such thing on hire.
- 601. If the thing taken on hire is destroyed while in the possession of the person taking such thing on hire, the latter may not be called upon to make good the loss, unless he has committed some wrongful act, or negligence, or performed any act which he is not authorised to do.
- 602. If the thing hired is destroyed by reason of the wrongful act of the person taking the thing on hire, or the value thereof is diminished, such person must make good the loss.

Example:- The person taking an animal or hire beats it and it dies, or is destroyed by reason of his brutal and violent driving. Such person must make good the loss.

- 603. If the person taking the thing on hire acts in a way contrary to what is customary, such act is wrongful and he must make good any damage or loss resulting therefrom.

Example:-

(1). Clothes which are taken on hire are used in a way contrary to what is customary and become tattered. The loss must be made good.

(2). A fire breaks out in a house which has been hired by reason of a fire being lighted which is larger than what is customary and house is burnt. The loss must be made good.

- 604. If the thing is destroyed owing to the failure of the person taking the thing on hire to take proper care, or the value thereof is decreased, the loss must be made good.

Example:- A person takes an animal on hire and drives it to a deserted place so that it is lost. He must make good the loss.

- 605. If the person taking the thing on hire goes beyond what he has agreed to do, acting in contravention of what he has been authorised to do, he must make good any loss caused thereby. But if his act in contravention results in something equivalent to or less than what he has agreed to do, he incurs no liability.

Example:- A takes an animal on hire to load so many okes of oil and instead loads the same number of okes of iron upon it and the animal is destroyed. A must make good the loss. But if a load equal to or lighter than oil is loaded and the animal is destroyed, there is no liability to make good the loss.

- 606. On the expiration of the contract of hire, the thing hired remains on trust in the possession of the person taking the thing on hire for safe keeping. Consequently, if the person taking the thing on hire uses such thing on the expiration of the period of hire and such thing is destroyed, he must make good the loss. Again, if the person giving the thing on hire asks for his property to be returned on the termination of the contract of hire, and the person taking the thing on hire fails to do so, he must make good the loss if such property is destroyed.

SECTION III. LOSS CAUSED BY EMPLOYEES.

- 607. If the thing entrusted to an employee to work upon is destroyed by the wrongful act or negligence of such person, the latter must make good the loss.
- 608. A wrongful act of an employee consists of any act or conduct contrary to the express or implied order of his employer.

Example:-

1. A instructs his shepherd who is his private employee to pasture his flock in a certain place and no other. The shepherd takes the flock to another place. He has committed a wrongful act, and if the animals are destroyed in that place, the shepherd must make good the loss.

(2). A hands cloth to a tailor instructing him to cut it and make him a long coat therefrom, if the cloth is sufficient. The tailor tells him that it is sufficient. If it turns out after the cloth is cut up that it is not sufficient for the purpose, A can claim to have the loss made good by the tailor.

- 609. Negligence of the employee consists of any fault of his of which he is guilty without excuse in the preservation of the thing entrusted to him on account of his employment.

Example:- An animal strays from the flock and is lost purely on account of the neglect of the shepherd to come and catch such animal. The shepherd must make good the loss. He is not liable, however, if his failure to go after the animal arose out of the probability that is so doing he would lose the other animals.

- 610. A private employee is a trustee. Consequently, he is under no obligation to make good any loss arising out of the destruction of property in his possession not caused by any act of his. Similarly, if property is destroyed by his own act without his fault he is not liable to make good the loss.

- 611. A public employee is liable to make good any damage or loss incurred by his own act, whether resulting from any wrongful act or negligence of his or not.

PROMULGATED BY ROYAL IRADAH 6TH. ZIL QADA, 1286.